SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 293

UNEXCELLED CHEMICAL CORPORATION, FORMERLY UNEXCELLED MANUFACTURING COMPANY, INC.,
Petitioner,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR PETITIONER

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INDEX

CITATIONS

Cases:

—5236

Miscellaneous:

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Opinions Below

The opinion of the district court (R. 13a-16a) is reported at 99 F. Supp. 155. The opinion of the court of appeals (R. 46-56) is reported at 196 F. 2d 264.

Jurisdiction

The judgment of the court of appeals was entered on April 29, 1952. On July 22, 1952, the time for filing the petition for a writ of certiorari was extended, by order of

Mr. Justice Clark, to and including August 26, 1952 (R. 58). The petition for a writ of certiorari was filed August 26, 1952 and was granted on October 27, 1952 (R. 59). The jurisdiction of this Court was invoked under 28 U. S. C. 1254(1).

Questions Presented

1. Whether an action by the United States to recover liquidated damages provided by the Walsh-Healey Act for employment of minors on public contracts must be commenced within the period limited by Section 6 of the Portal-to-Portal Act, which provides:

> "*Statute of Limitations,—Any action commenced on or after the date of the enactment of this Act to enforce any cause of action for* unpaid minimum wages, unpaid overtime compensation, or *liquidated damages, under the* Fair Labor Standards Act of 1938, as amended, the *Walsh-Healey Act,* or the Bacon-Davis Act—
>
> (a) if the cause of action accrues on or after the date of the enactment of this Act—may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued;
>
> (b) *if the cause of action accrued prior to the date of the enactment of this Act—may be commenced within whichever of the following periods is the shorter: (1) two years after the cause of action accrued,* or (2) the period prescribed by the applicable State statute of limitations; and except as provided in paragraph (c), every such action shall be forever barred unless commenced within the shorter of such two periods;
>
> (c) if the cause of action accrued prior to the date of the enactment of this Act—the action shall not be barred by paragraph (b) if it is commenced within one

hundred and twenty days after May 14, 1947 unless at the time commenced it is barred by an applicable State statute of limitations." Portal-to-Portal Act of May 14, 1947, c. 52, Section 6, 61 Stat. 87; 29 U. S. C. § 255 (Supp. V).

2. If the answer to Question No. 1 be "Yes," then does the time for filing an action at law to recover such liquidated damages under the Walsh-Healey Act commence to run from the date of the violation giving rise to the claim for such damages rather than from the date of the administrative determination that a violation has occurred?

Petitioner contends both questions should be answered, "Yes."

Statutes Involved

The pertinent provisions of the Portal-to-Portal Act and the Walsh-Healey Public Contracts Act are set forth in the Appendix, *infra*, pp. 22-28.

Statement

From 1942 to 1945, the United States awarded some thirty-three munitions contracts (Decision of Hearing Examiner, R. 26a-29a) to petitioner Unexcelled Chemical Corporation (formerly Unexcelled Manufacturing Corporation, Complaint, Par. III, R. 2a). On April 22, 1947, the Secretary of Labor commenced an administrative proceeding alleging that in the performance of said contracts petitioner knowingly employed boys under sixteen and girls under eighteen years of age contrary to stipulations inserted in the contracts as required by the Walsh-Healey Act, Section 1 (Hearing Examiner's Decision, R. 23a) (Complaint, Par. IV, R. 3a). Of the 3,830 workday violations alleged, the hearing examiner found that the evidence established 1,560 workday violations occurring between November 3, 1942, and November 11, 1945 (Hearing Examiner's De-

cision, R. 29a-30a, 36a-38a). All of the violations found were in the case of girls, most of whom had been referred to petitioner for employment by the United States Employment Service and who represented themselves to be of employable age. Petitioner was found at fault in accepting for employment girls who, in the opinion of the hearing examiner, had been sufficiently youthful in appearance to warn a prudent contractor as to the veracity of their representations (Hearing Examiner's Decision, R. 32a, 39a, 40a). In the case of five girls, the finding of fault was based on discrepancies between statements by the girls as to age and specific dates of birth information (Examiner's Decision, R. 40a). The decision of the hearing examiner on February 25, 1949, was that the petitioner pay \$15,600 as liquidated damages and a recommendation that petitioner be relieved of the "black-listing" sanction provided in Section 3 of the Walsh-Healey Act (R. 43a-44a).

A complaint to recover \$15,600 from the petitioner was filed on January 27, 1950, in the United States District Court of New Jersey by the United States Attorney for that District (R. 1a-4a). Petitioner's answer asserted two defenses (R. 5a-6a):

(1) That petitioner did not knowingly employ such minor persons and that the finding to the contrary is not supported by the preponderance of the evidence.

(2) That the alleged wrongful employment of minors set forth in the complaint occurred more than two years prior to the commencement of the action, citing Section 6 of the Portal-to-Portal Act.

Both parties moved for summary judgment on the pleadings and the record of the administrative proceedings conducted by the Department of Labor (R. 8a-9a, 11a-12a). Petitioner's motion was granted on the ground the periods of limitation prescribed by the Portal-to-Portal Act were

applicable and ran from the date of the alleged violation rather than from the date of administrative determination (R. 13a-16a). Judgment dismissing the complaint (R. 18a) was reversed by the Court of Appeals for the Third Circuit (R. 56-57). The Court of Appeals held the Portal-to-Portal Act inapplicable to actions by the United States to recover liquidated damages for the employment of minors in violation of contracts governed by the Walsh-Healey Act (R. 46-56).

Specification of Errors to Be Urged

The Court of Appeals erred:

(1) In holding that an action by the United States to recover liquidated damages for child labor violations under the Walsh-Healey Public Contracts Act need not be commenced within two years as provided by Section 6 of the Portal-to-Portal Act.

(2) In failing to affirm the district court holding that the cause of action arose at the time of the violation.

Summary of Argument

I

Respondent demands judgment against petitioner for sums which are "liquidated damages" under the Walsh-Healey Act. The last violation relied on occurred in 1945 but the action was not filed until 1950. Section 6 of the Portal-to-Portal Act provides that "Any action * * * to enforce any cause of action for * * * liquidated damages, under * * * the Walsh-Healey Act * * * shall be forever barred unless commenced within * * *" two years after the cause of action accrued. The Court of Appeals has held this much of the Portal-to-Portal Act was simply a legislative blunder and that Congress clearly

never intended to provide a statute of limitations for liquidated damage actions based on the child labor provisions of the Walsh-Healey Act. The best that can be said for this view is that it *may* be correct if the plain statutory text is ignored and emphasis placed on the absorbing concern of the legislature with the urgent portal-to-portal pay problem then confronting industry. Petitioner claims the benefit of Section 6, relying on the patent purpose of the Portal-to-Portal Act to enact a statute of limitations which would apply to actions by the United States for liquidated damages under the Walsh-Healey Act. Petitioner also relies on evidence that the House considered the general problem of limiting actions arising under federal laws and successfully pressed for amendments in Conference which resulted in the general language enacted as law in Section 6 being substituted for the restrictive language adopted by the Senate. In the face of speculation as to the legislative intent, full effect should be given the plain text, which does not conflict with other provisions nor impair any express legislative purpose.

II

If Section 6 of the Portal-to-Portal Act requires that this action be commenced within two years, then that time runs from the date of each workday violation. Respondent's contention that it does not run until termination of an administrative proceeding is utterly contrary to accepted doctrine and is unsupported by any true analogies.

Argument

I

THE LEGISLATIVE HISTORY DOES NOT CLEARLY CONTRADICT THE INTENT OF CONGRESS AS STATED IN THE STATUTORY LANGUAGE OF SECTION 6 OF THE PORTAL-TO-PORTAL ACT

There is no ambiguity or absurdity of result in the statutory language of Section 6 of the Portal to Portal Act upon which petitioner relies for a defense in this case. Only the United States may maintain actions arising under the Walsh-Healey Act, and therefore the limitations period can apply to none other than the United States. The claim asserted is for liquidated damages by the very terms of the Walsh-Healey Act. Absent ambiguity, or absurd result, no room appears for construction or resort to legislative history.

But the court below found the limitations provisions ambiguous by adverting to findings made as preambulatory statements in Section 1 which declared the serious nature of the portal-to-portal pay problem and in particular that

> "* * * (1) the payment of such liabilities would bring about financial ruin of many employers and seriously impair the capital resources of many others, * * *; (4) employees would receive windfall payments, including liquidated damages, of sums for activities performed by them without any expectation of reward beyond that included in their agreed rates of pay; * * *"
>
> "* * * all of the results which have arisen or may arise under the Fair Labor Standards Act of 1938, as amended, as aforesaid, may (*except as to liability for liquidated damages*) arise with respect to the Walsh-Healey and Bacon-Davis Acts and that it is, therefore, in the national public interest * * * that this Act shall apply to the Walsh-Healey Act and the Bacon-Davis Act." Portal-to-Portal Act of 1947, § 1(a) 61 Stat.

84; 29 U. S. C. Section 251 (Supp. V). (Italics supplied.)

Finding ambiguity, resort was then had to construction and legislative history, particularly the predominant concern of Congress with the portal-to-portal pay problem, changes in successive drafts, and certain statements in debate by the managers asserting that purely cautionary motives prompted inclusion of the Walsh-Healey and Bacon-Davis Acts.

Petitioner contends that the Third Circuit Court of Appeals has deprived government contractors of beneficial legislation by errors in (1) over-emphasizing the significance of the preambulatory findings in relation to the limitations provisions and (2) slighting the original House version of H. R. 2157 in interpreting the significance of changes effected by Conference Committee action. Petitioner's discussion of the subject will not attempt to prove any clear intention of Congress to affect the instant type of litigation. It will, however, attempt to show in the legislative history, currents of purpose which discredit the conclusion that plain language can be ignored because there was clearly *no* such intention.

In Section 1 of the Portal-to-Portal Act, Congress stated at considerable length its findings as to the consequences which were developing from the application of the Fair Labor Standards Act to postliminary and preliminary activities. It also expressed a judgment as to the effect on the national economy. Among the consequences noted was that employees had suddenly and unexpectedly become entitled to "windfall" payments for activities never theretofore considered compensable, including liquidated damages, and it was stated that similar results-except as to liquidated damages might occur under the Walsh-Healey and Bacon-Davis Acts. In all this, Congress was exclu-

sively absorbed with the portal-to-portal pay problem. The reason for making such meticulous findings was immediately related to the drastic remedy which Congress was about to enact in Section 2, i. e., outlawing claims for such portal-to-portal activities by withdrawing jurisdiction from the courts, state and federal. Undoubtedly, it was hoped by the legislative draftsmen that the statement of the seriousness of the problem would be considered when the constitutional validity of such legislation encountered the inevitable judicial review. Sutherland, Statutory Construction (3rd Ed., Horack) Section 4807. The constitutional question was seriously debated then, and later raised in numerous cases. Annotations, 3 A. L. R. 2d 1097, 21 A. L. R. 2d 1327. In sustaining the legislation, the elaborate findings of Section 1 were relied on to show that the Act was necessary and neither arbitrary nor unreasonable. *Battaglia* v. *General Motors Corporation* (C. A. 2, 1948) 169 F. 2d 254, cert. denied 335 U. S. 887.

But in writing a statute of limitations Congress was enacting remedies for problems broader than mere portal-to-portal pay.[1] Much of the hearings and debate concerned the desirability of a uniform statute of limitations for private wage and overtime actions. There could be no doubt as to the validity of such legislation for claims accruing subsequent to the statute. Even legislation shortening the period of limitations for existing claims has long been acknowledged as valid if a reasonable time is allowed. 34 Amer. Jur. 33, Limitation of Actions Sec. 28. The "windfall" payments discussed in Section 1 were abolished

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[1] House Report 71, 80th Cong., 1st Session, which introduced H. R. 2157 is arranged with two sections. The first was concerned with "windfall" pay problems. The second section discussing the statute of limitations was entitled "Provisions Affecting All Claims, Causes of Action and Actions under the Fair Labor Standards Act, the Walsh-Healey Act, and the Bacon-Davis Act."

by Section 2, regardless of whether such claims were brought by employees under the Fair Labor Standards or Bacon-Davis Acts or by the United States under the Walsh-Healey Act. Therefore, statements in Section 1 as to the scope of the "windfall" pay problem had no relation to Section 6, which concerned only claims outside the scope of the more serious problem discussed in Section 1. Language in Section 1 stating that the Walsh-Healey and Bacon-Davis Acts did not present a problem of "liquidated damages" must be confined to the portal-to-portal pay problem then in mind. Indeed, the finding itself says it fears "all of the results . . . aforesaid" in relation to these Acts. The "liquidated damages" visualized was an award in addition to the basic under-payment, and for such the contractor is liable directly to the employee under the Fair Labor Standards Act but not under the Walsh-Healey Act. The damages to which the contractor is liable under the Walsh-Healey Act are, however, "liquidated," not only because the Act describes them as such, but because they bear no necessary relation to an injury suffered by the promisee and plaintiff, the United States.

The only possible allusion in Section 1 to the matters regulated in Section 6 was a statement that

> "The Congress further finds that the varying and extended periods of time for which, under the laws of the several States, potential retroactive liability may be imposed upon employers, have given and will give rise to great difficulties in the sound and orderly conduct of business and industry." Portal-to-Portal Act of 1947, § 1(a). 61 Stat. 85; 29 U.S.C. 251(a) (Supp. V).

The court below evidently conceived the legislative thought process illuminated by this finding as coterminous with the purpose and scope of Section 6, or in other words, that the limitations enacted in Section 6 concern only such cases as

gave rise to the difficulties enumerated in the preambulatory findings of Section 1. But if Section 6 is broader in some respects than the finding, then the identity of scope is incomplete and the presumption erroneous. Again looking first to the text, it was concerned with the wake of *Anderson* v. *Mt. Clemens Pottery Co.,* 328 U. S. 680 (1946) for the evil mentioned is "potential retroactive liability." These words do not describe the basic claims subjected to limitations in Section 6. And dissimilarity in state statutes of limitation was not the whole problem, for such statutes were inapplicable to minimum wage and overtime pay claims by the United States under the Walsh-Healey Act. It can hardly be contended Congress did not intend to limit the latter actions and therefore Section 6 is broader in scope than the problem identified in the preambulatory finding. Whether it is broad enough to embrace the instant litigation is the precise problem.

The version of H. R. 2157 enacted by the Senate established limitations on Fair Labor Standards Act claims by amendment of that Act and confined the limitations to claims for minimum wages or overtime pay.[2] It enacted

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[2] "Section 9. Limitations: The Fair Labor Standards Act of 1938, as amended, is further amended by adding at the end of Section 16 the following new sub-section:

"(e)(1) Every claim under this act for unpaid minimum wages, unpaid overtime compensation, or an additional amount as liquidated damages, accruing prior to or on or after the date of enactment of the Portal-to-Portal Act of 1947, shall be forever barred unless, within two years after such claim accrued, suit to enforce such claim is commenced in a court of competent jurisdiction.

(2) Notwithstanding the provisions of paragraph (1) of this sub-section, suit to enforce any such claim accruing prior to the date of enactment of the Portal-to-Portal Act of 1947 may be commenced within 120 days after such date if such claim is not barred at the time of commencing suit by any other statute of limitations; and the period of limitation provided for in paragraph (1) of this sub-section shall not be applicable to any suit so commenced.

"(3) Any such claim, if based on portal-to-portal activities as defined in section 5 of the Portal-to-Portal Act of 1947; and any suit thereon, shall

limitations on similar claims which might be made under the Walsh-Healey and Bacon-Davis Acts. In doing so the Senate followed a pattern of particularity which had marked the course of previous Senate action touching the same subject. In comparison, House proposals had been generalized as limitations of action under federal statutes. Thus, in the 79th Congress, H. R. 2788 was introduced by Congressman Gwynne and passed the House as a general one year statute of limitations on any action under the laws of the United States.[3] House Report 1141, 79th Cong., 1st Session, in support of H. R. 2788 listed some nineteen laws affected, as to which there was said to be no period of limitations.

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be subject to the provisions of section 4 of the Portal-to-Portal Act of 1947."

(b)(1) Every claim under the Walsh-Healey Act or the Bacon-Davis Act or [sic] unpaid minimum wages or unpaid overtime compensation, and under the Walsh-Healey Act for an additional amount as liquidated or other damages, accruing prior to or on or after the date of enactment of the Portal-to-Portal Act of 1947 shall be forever barred unless, within two years after such claim accrued, suit to enforce such claim is commenced in a court of competent jurisdiction.

(2) Notwithstanding the provisions of paragraph 1 of this sub-section, suit to enforce any such claim accruing prior to the date of enactment of the Portal-to-Portal Act of 1947 may be commenced within 120 days after such date; and the period of limitation provided for in paragraph (1) of this sub-section shall not be applicable to any suit so commenced.

(3) Any such claim, if based on portal-to-portal activities as defined in section 5 of the Portal-to-Portal Act of 1947, and any suit thereon, shall be subject to the provisions of section 4 of the Portal-to-Portal Act of 1947." (Text as taken from 93 Cong. Record 2376-7.)

[3] As introduced, H. R. 2788 read: "Be it enacted, * * * That Title 28 of the United States Code, as amended, be further amended by adding a new section to be known as section 793, and to read as follows: "Sec. 793. Except as otherwise provided in any act creating a right of action to recover damages, actual or exemplary, no action under the laws of the United States shall be maintained unless the same is commenced within one year after such cause of action accrued, unless a shorter time be fixed in any applicable State statute. Provided, however, that public actions to recover money damages may be enforced if brought within two years after the cause of action accrued except when the United States is not the real party in interest. Provided further, that the person liable for such damages, shall within the same period, be found within the United States so that proper process thereof may be instituted and served against such person." Text as printed in 91 Cong. Record 2927.

Many provided for actions by the United States, and the report specifically listed the Walsh-Healey Act.[4] Protests as to the effect of the bill on actions by the United States were received from the Attorney General,[5] and similar protests were made in debate. As a result, H. R. 2788 was amended prior to passage in the House by adding the words: ". . . except actions brought by the United States as the real party in interest." In the Senate, the number of the bill was retained but the language after the enacting clause entirely replaced by substituting limitations on claims for minimum wage and overtime pay which might arise under the Fair Labor Standards and Walsh-Healey Acts. These limitations were enacted as amendments to those Acts.[6]

Similarly, in the 80th Congress, the House enacted legislation establishing limitations in general language. H. R. 2157, as enacted by the House[7] provided as follows:

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[4] House Report 1141, 79th Cong., 1st Session, which chiefly discussed the problems resulting in the wake of *Anderson* v. *Mount Clemens Pottery Company*, 328 U.S. 680 (1946), contained the following statement: "This bill would affect only causes of action for the recovery of wages, penalties, or other damages pursuant to any law of the United States, and for which a specific statute of limitations is not provided. It would affect only the following causes of action: * * * 13. Suits by the United States for liquidated damages based on failure of any contractor to comply with terms of contract as to wages, hours, etc. (41 U.S.C. sec. 36)." That the "et cetera" abbreviation is mean to embrace the child labor penalty provisions can be seen by reverting to the statement made to the House by Congressman Gwynne in support of the bill he introduced. He read to the House excerpts from a number of statutes. The only excerpt which he read from the Walsh-Healey Act was Section 1(d), 41 U.S.C. sec. 35(d), relating to stipulations against employment of child labor and the penalties for breach. He noted that there was no limitation at all on public actions under the Walsh-Healey Act. (91 Cong. Record 2928).

[5] A letter from the Attorney General is appended to House Report 1141.

[6] This legislation did not get as far as Conference Committee action in the 79th Congress.

[7] H. R. 2157 was introduced by Congressman Gwynne on Feb. 24, 1947. (House Journal, 80th Cong., 1st session, p. 151). Its genesis, according to Congressman Michener (93 Cong. Rec. 1489), was in H. R. 584, introduced by Congressman Gwynne on January 7, 1947. (House Journal, p. 36) The text of H. R. 584 (Hearings, House Judiciary Committee, Sub-committee No. 2, Feb. 3-10, 1947, pp. 1-4) shows the scope was identical with H. R. 2157 and the language nearly so.

"Sec. 2. Every claim, cause of action, and action for the recovery of wages, overtime compensation, penalties, or damages (actual, liquidated or compensatory) pursuant to any law of the United States mentioned in section 5 hereof shall be subject to the following limitations and conditions:

(a) Hereafter no such action shall be maintained unless the same is commenced within one year after such cause of action accrued."

Section 5 limited its application to the Fair Labor Standards, Walsh-Healey and Bacon-Davis Acts. The House was told by Congressman Hobbs:

"The Gwynne bill last year brought up the point that there were 19 civil laws providing civil penalties no one of which had any limitation, no derailing switch, and therefore we provided one, which met with the almost unanimous approval of the House. We are trying to do the same thing today." (93 Cong. Rec. 1560)

The "Gwynne bill" here referred to was H. R. 2788, 79th Congress, supra page twelve, note three. H. R. 2157, supra, was never subjected in the House to amendment such as that imposed in the 79th Congress on H. R. 2788 excepting actions by the United States as real party in interest, although concern was expressed in the hearings for the interests of the United States when suing on its own account (Hearings on H. R. 2157, House Committee on the Judiciary, Feb. 3-10, 1947. Page 385). Perhaps this was because it was limited to specific statutes, unlike the universality of H. R. 2788, 79th Congress.[8]

[8] A suggestion that the desirability of an exception for the United States might well depend on the scope of the legislation appears in this excerpt from testimony before the House Judiciary Committee: "Mr. Robison: Mr. Smith (Milton Smith, Assistant General Counsel, Chamber of Commerce, who urged a one year limitation period), would you object to a provision that the United States would be excepted on the matter of limitations?"

"Mr. Smith: Of course, that would depend on whether the committee

In the Senate, H. R. 2157 was referred to the Judiciary Committee and reported out with amendments which struck everything after the enacting clause and substituted entirely different language. Sec. 9 amended Sec. 16 of the Fair Labor Standards Act so as to establish a two year limitation on

> "claims for unpaid minimum wages, unpaid overtime compensation, or an additional amount as liquidated damages."

It also provided a two year limitation on

> "every claim under the Walsh-Healey Act or the Bacon-Davis Act for unpaid minimum wages or unpaid overtime compensation, and under the Walsh-Healey Act for an additional amount as liquidated damages or other damages. . . ."

The ultimate language of the law, present Section 6, was the result of Conference Committee action. The court below read it as though still restricted by the specific language of the version passed by the Senate which mentioned only claims for minimum wage or overtime pay. This emphasis slights the insistence of the House on its own language (House Journal, 80th Congress, 1st session, p. 221). The genealogy of Section 6 is impressed more nearly with the likeness of the original House version, speaking in general terms of limitations on all actions, than

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decided to recommend a broad statute of limitations applicable to all types of action arising under the Federal law or whether it enacted a limitation applicable only on matters arising under the Fair Labor Standards Act. Possibly it might decide to enact one limited to only a limited class or type of cases. The degree of desirability of the exception for the United States would be related to the character of the statute that was finally imposed in the legislation. If it were a broad general statute of limitations applicable to all types of actions arising under federal law, it doubtless would be necessary to provide some exemptions in the case of actions brought by the United States Government." (Hearings on H. R. 2157, House Committee on Judiciary, Feb. 3-10, 1947, page 17.)

with the carefully selected types of claims which characterized all Senate proposals on the same subject.[9]

If the burden of proof were on petitioner to show, aside from the language of Section 6, that Congress intended to establish a two year period of limitations on the instant type of litigation, it could not prevail. The legislative history adverted to is indeed a quagmire of speculation when the plain text of the statute is cast aside in a search for some subjective legislative intent. Petitioner does, however, contend that a thread of purpose to legislate as to all actions for damages arising under these three statutes can be detected and feels that there should not be a departure from the language of Section 6 which appears to establish clear criteria for counselling and conducting litigation.

II

THE STATUTE OF LIMITATIONS COMMENCES TO RUN FROM THE DATE OF THE VIOLATION GIVING RISE TO THE CLAIM FOR DAMAGES

The opinion of the district court assumed without discussion that Section 6 of the Portal-to-Portal Act applied and discussed only whether the period of limitations ran from the date of the violations or the date of the administrative determination. It noted district court holdings that while the Portal-to-Portal Act did apply, it ran from the latter event. *United States* v. *Craddock-Terry Shoe Corporation* (D. C. W. D. Va. 1949) 84 F. Supp. 842, affirmed on other grounds, 178 F. 2d 760; *United States* v. *Hudgins-Dize Co.* (D. C. E. D. Va. 1949) 83 F. Supp. 593, 597; *United States* v. *Lance, Inc.* (D. C. W. D. N. C. 1951) 95 F. Supp. 327, reversed 190 F. 2d 204; *United States* v. *Sweet Briar*

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[9] Other Senate bills offered on the same subject at the same session also were narrowly specific in coverage. See S. 49, S. 154, S. 70, S. 160, 80th Congress, 1st Session.

(D. C. W. D. S. C. 1950) 92 F. Supp. 777, 781. Judge Meaney, in his opinion, filed June 22, 1951, was persuaded that the violation was the event which commenced the running of the limitations period, chiefly relying on *McMahon* v. *United States* (C. A. 3, 1950) 186 F. 2d 227, subsequently affirmed 342 U. S. 25, rehearing denied 342 U. S. 899. No mention was made of *United States* v. *Lovknit Manufacturing Co., Inc., et al.*, (C. A. 5, decided June 1, 1951) 189 F. 2d 454, cert. denied 342 U. S. 896, reh. denied 342 U. S. 915, which also squarely held in accord with his own opinion. The *Lovknit* case was followed in *Lance, Inc.* v. *United States* (C. A. 4, 1951) 190 F. 2d 204, cert. denied, 342 U. S. 896, reh. denied 342 U. S. 915. The Court of Appeals for the Third Circuit reversed on the sole ground that the Portal-to-Portal Act did not apply, and did not rule on date from which limitation might run. Nevertheless, certiorari was granted without limitation of the petition which requested review of both aspects of the case.

The first point to be noticed in this connection is Section 7 of the Portal-to-Portal Act:

> "In determining when an action is commenced for the purposes of section 6, an action commenced on or after the date of enactment of this Act under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, shall be considered to be commenced on the date when the complaint is filed; * * *" 61 Stat. 88; 29 U. S. C. Section 256 (Supp. V).

The United States has contended that the event from which the limitations period should run is the administrative determination that a violation has occurred. The theory is apparently that the administrative determination is an element of the cause of action upon which the action at law is based. Justification is sought for this view in the provisions of the Walsh-Healey Act committing administration

of that Act to the Secretary of Labor (Sec. 4), providing for hearings and subpoena powers (Sec. 5), and giving to his findings an effect conclusive on all other agencies of the United States, including the courts "if supported by the preponderance of the evidence." The Court of Appeals for the Fifth Circuit has thought that independent evidence could be introduced to supplement such administrative findings. *United States* v. *Lovknit Manufacturing Co.*, 189 F. 2d 454, 459.

The Walsh-Healey Act provides several remedies to the Government in case of violations: Cancelling the contract, charging the cost of open market purchases or other contracts to the contractor (Sec. 2); withholding from money due on the contract (Sec. 2); suit by the Attorney General to recover sums due for violations of the contract (Sec. 2); and listing the offender as ineligible to receive any government contracts for three years (Sec. 3). The conclusive effect to be given findings of the Secretary of Labor would seem primarily important as a means of effectuating the "blacklisting" sanction in Sec. 3. The specific application of this "conclusive effect" feature to the courts is a safeguard against a court's substituting its own judgment for that of the Secretary of Labor as to who shall be permitted to do business with the government. The frame in which this might arise would be an action to enjoin a government official either from distributing or maintaining the blacklist, or from refusing to award a contract to a blacklisted contractor. Again, the reviewability of the finding might come up in a mandamus action to require the Comptroller General to certify a contractor's claim for payment without deduction for sums withheld, or in a suit by the contractor in the Court of Claims in which the United States might plead a set-off or counterclaim. It is not necessary to assume, as the respondent has contended, that the "conclusive effect"

provision is meaningless unless applied to an action at law by the United States to recover sums administratively determined to be due. Furthermore, to condition enforcement of the Act on long drawn out administrative processes would seem also to mean that the contract could not be cancelled, nor sums withheld, nor open market purchases made at the contractor's cost, until the Secretary of Labor had made an administrative determination after notice and hearing.

It is a corollary of respondent's contention that the time when the limitations period starts to run is within the choice of a party to the contract. This power was thought by the respondent to be wholly undesirable in the case of *McMahon* v. *United States*, *supra*, where it opposed a contention which would have enabled the injured party to postpone the running of the limitations period by delaying to file an administrative claim. It argued in that case in language apt to the instant problem:

> "Statutes of limitation are statutes of repose. Their purpose is to benefit defendants and the courts by bringing an end to litigation and by precluding the trial of an issue at a time when the evidence has become stale. It would defeat 'those practical ends which are to be served by any limitation of the time within which an action must be brought' (*Reading Co.* v. *Koons*, 271 U. S. 58, 62) if a plaintiff could prevent the statute from running by delaying to perform a condition which he and he alone can fulfil." Brief for respondents, 20. *McMahon* v. *United States*, No. 17, Oct. Term, 1951.

In the *McMahon* case, this Court held that where the Suits in Admiralty Act required suit within two years after the cause of action arose, the time was not tolled by a prohibition of action prior to administrative disallowance of certain seamen's claims. The disfavor with which the law regards indefinite postponement of the statute of limitations was

also confirmed in *Pillsbury v. United Engineering Company* (1952) 342 U. S. 197. In that case the Court held that the one year limitation on claims for workmen's compensation ran from the event of physical injury and not from such indefinite time as the date the injury became compensable.

Section 2 of the Walsh-Healey Act authorizes the Attorney General to institute suits to recover for violation of contracts affected and does not condition the power to act on preliminary administrative hearings. No adequate or compelling reason appears to stay the usual view that a period of limitations begins to run from the date of the last event necessary to determine liability. This was the view of the trial court in the case at bar, who said:

> "The basic legal wrong of which the Government complains herein is the employment of minors in breach of the stipulation required by statute. Such a breach immediately rendered the contractor liable to the Government for liquidated damages."

As pointed out in the Lovknit case, supra, the respondent's claim for a right of indefinite postponement would entirely nullify the Portal-to-Portal Act limitation on Walsh-Healey claims.

Conclusion

Petitioner claims the benefit of legislation which, when plainly read, applies to the liability with which it is taxed. It is true that the portal-to-portal pay problem, threatening the economy like the Damoclean sword, was the pressing, urgent issue in the legislative mind. The actual legislation, however, encompassed broader purposes. When it intended to limit the legislation to claims and activities in the area of minimum wages and overtime pay, Congress chose appropriately precise language, as in Sections 9 and 10. So illuminated, the unmodified generality of Section 6 seems

the more significant. No purpose of the Portal-to-Portal, Walsh-Healey or Bacon-Davis Acts would be subverted by giving effect to such generality. The partial nullification effected by the Court of Appeals can be justified only by a process of reasoning which is far beyond the capacity of an ordinary person reading the statute and not likely to occur to counsel. Such an approach to statutory reading is perilously oblivious of the admonition that

> "plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction." *Gemsco v. Walling*, 324 U. S. 244, 260 (1945).

The conclusion most useful and consonant with usage is therefore to give full effect to the statutory language. This requires that the judgment of the Court of Appeals be reversed, and the case remanded with directions to affirm the judgment of the trial court.

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APPENDIX

1. The pertinent portions of sections 1, 2, 3, 4, 5, and 6 of the Walsh-Healey Public Contracts Act (Act of June 30, 1936, 49 Stat. 2036, 41 U. S. C. §§ 35, 36, 37, 38, 39, and 40) provide as follows:

> SEC. 1. * * * That in any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding $10,000, there shall be included the following representations and stipulations:
>
> * * * * * * *
>
> (c) That no person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of eight hours in any one day or in excess of forty hours in any one week;
>
> (d) That no male person under sixteen years of age and no female person under eighteen years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract; * * *
>
> * * * * * * *
>
> SEC. 2. That any breach or violation of any of the representations and stipulations in any contract for the purposes set forth in section 1 hereof shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of

such contract, the sum of $10 per day for each male person under sixteen years of age or each female person under eighteen years of age, or each convict laborer knowingly employed in the performance of such contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of such contract; and, in addition, the agency of the United States entering into such contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of said contract set forth in section 1 hereof may be withheld from any amounts due on any such contracts or may be recovered in suits brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided*, That no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

* * * * * * *

Sec. 3. "The Comptroller General is authorized and directed to distribute a list to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any of the agreements or representations required by sections 35-45 of this title. Unless the Secretary of Labor otherwise recommends no contracts shall be awarded to such persons or firms or to any firm, corpo-

ration, partnership, or association in which such persons or firms have a controlling interest until three years have elapsed from the date the Secretary of Labor determines such breach to have occurred."

SEC. 4. The Secretary of Labor is hereby authorized and directed to administer the provisions of this Act * * * and to prescribe rules and regulations with respect thereto. * * * The Secretary of Labor or his authorized representatives shall have power to make investigations and findings as herein provided, and prosecute any inquiry necessary to his functions in any part of the United States. The Secretary of Labor shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act.

SEC. 5. Upon his own motion or on application of any person affected by any ruling of any agency of the United States in relation to any proposal or contract involving any of the provisions of this Act, and on complaint of a breach or violation of any representation or stipulation as herein provided, the Secretary of Labor, or an impartial representative designated by him, shall have the power to hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal of any person to obey such an order, any District Court of the United States or of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides or transacts business, upon the application by the Secretary of Labor or representative designated by him, shall have jurisdiction to issue to such person an order requiring such person to appear before him or representative designated by him, to produce evidence if, as and when so ordered, and to give testimony relat-

ing to the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof; and shall make findings of fact after notice and hearing, which findings shall be conclusive upon all agencies of the United States, and if supported by the preponderance of the evidence, shall be conclusive in any court of the United States; and the Secretary of Labor or authorized representative shall have the power, and is hereby authorized, to make such decisions, based upon findings of fact, as are deemed to be necessary to enforce the provisions of this Act.

SEC. 6. * * * The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act respecting minimum rates of pay and maximum hours of labor or the extent of the application of this Act to contractors, as hereinbefore described. Whenever the Secretary of Labor shall permit an increase in the maximum hours of labor stipulated in the contract, he shall set a rate of pay for any overtime, which rate shall be not less than one and one-half times the basic hourly rate received by any employee affected: * * *.

2. The pertinent portions of the Portal-to-Portal Act of 1947 (Act of May 14, 1947, 61 Stat. 84, 29 U. S. C. 251 *et seq.* Supp. V) provide as follows:

SEC. 1 (a). The Congress finds hereby that the Fair Labor Standards Act of 1938, as amended, has been interpreted judicially in disregard of long-established customs, practices, and contracts between employers and employees, thereby creating wholly unexpected liabilities, immense in amount and retroactive in operation, upon employers with the results that, if said Act as so interpreted or claims arising under such interpretations were permitted to stand, (1) the payment of such liabilities would bring about financial ruin of many employers and seriously impair the capital re-

sources of many others, thereby resulting in the reduction of industrial operations, halting of expansion and development, curtailing employment, and the earning power of employees; (2) the credit of many employers would be seriously impaired; (3) there would be created both an extended and continuous uncertainty on the part of industry, both employer and employee, as to the financial condition of productive establishments and a gross inequality of competitive conditions between employers and between industries; (4) employees would receive windfall payments, including liquidated damages, of sums for activities performed by them without any expectation of reward beyond that included in their agreed rates of pay; (5) there would occur the promotion of increasing demands for payment to employees for engaging in activities no compensation for which had been contemplated by either the employer or employee at the time they were engaged in; (6) voluntary collective bargaining would be interfered with and industrial disputes between employees and employers and between employees and employees would be created; (7) the courts of the country would be burdened with excessive and needless litigation and champertous practices would be encouraged; (8) the Public Treasury would be deprived of large sums of revenues and public finances would be seriously deranged by claims against the Public Treasury for refunds of taxes already paid; (9) the cost to the Government of goods and services heretofore and hereafter purchased by its various departments and agencies would be unreasonably increased and the Public Treasury would be seriously affected by consequent increased cost of war contracts; and (10) serious and adverse effects upon the revenues of Federal, State, and local governments would occur.

The Congress further finds that all of the foregoing constitutes a substantial burden on commerce and a substantial obstruction to the free flow of goods in commerce.

The Congress, therefore, further finds and declares

that it is in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this Act be enacted.

The Congress further finds that the varying and extended periods of time for which, under the laws of the several States, potential retroactive liability may be imposed upon employers, have given and will give rise to great difficulties in the sound and orderly conduct of business and industry.

The Congress further finds and declares that all of the results which have arisen or may arise under the Fair Labor Standards Act of 1938, as amended, as aforesaid, may (except as to liability for liquidated damages) arise with respect to the Walsh-Healey and Bacon-Davis Acts and that it is, therefore, in the national public interest and for the general welfare, essential to national defense, and necessary to aid, protect, and foster commerce, that this Act shall apply to the Walsh-Healey Act and the Bacon-Davis Act.

* * * * * * *

Sec. 6. Statute of Limitations.—Any action commenced on or after the date of the enactment of this Act to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act—

(a) if the cause of action accrues on or after the date of the enactment of this Act—may be commenced within two years after the cause of action accrued, and every such action shall be forever barred unless commenced within two years after the cause of action accrued;

(b) if the cause of action accrued prior to the date of the enactment of this Act—may be commenced within whichever of the following periods is the shorter: (1) two years after the cause of action accrued, or (2) the

period prescribed by the applicable State statute of limitations; and except as provided in paragraph (c), every such action shall be forever barred unless commenced within the shorter of such two periods;

(c) if the cause of action accrued prior to the date of the enactment of this Act, the action shall not be barred by paragraph (b) if it is commenced within one hundred and twenty days after the date of the enactment of this Act unless at the time commenced it is barred by an applicable State statute of limitations.

* * * * * * *